

**SUPPLEMENTAL CONDITIONS
DEPARTMENT OF NATURAL RESOURCES
Engineering Division
July 2003**

(For use with Short Form General Conditions (SFGC) only)

1.0 Add the following definitions to Section 1.1 DEFINITIONS of the SFGC:

- M. "Application for Payment" means a written request submitted by Contractor to Owner for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner may require.
- N. "Change Order" means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- O. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in Section 5 of these Supplemental Conditions.
- P. "Notice of Award" means the written notice by Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions listed in the notice, within the time specified, Owner will sign and deliver the Agreement.
- Q. "Claims-Made Insurance" covers only those claims, which occur during the policy period and are reported during the policy period. "Tail Policy" covers period outside of the time period covered by a "Claims-Made Policy."
- R. "Occurrence Insurance" covers injuries and liability arising out of occurrences during the policy period regardless of when the claim is made.
- S. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner.

2.0 Add the following paragraph to Section 1.3 CONTRACTOR REPRESENTATIONS of the SFGC:

- D. Contractor has carefully reviewed the Contract Documents, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;

3.0 Add the following section to Part 2 – INSURANCE AND BONDS of the SFGC:

2.4 ADDITIONAL BOND SECURITY

Contractor shall promptly furnish additional security required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if requested by Owner.

4.0 Replace Section 3.3 OWNER'S RIGHT TO SUSPEND OR STOP THE WORK of the SFGC with the following two paragraphs:

3.3 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE

- A. Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 days, or for such longer period as mutually agreed.
- B. Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
 - 1. Cancel the written notice suspending the Work; or
 - 2. Terminate the Work covered by the notice as provided in the termination provisions of part 9.
- C. If a written notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance directly attributable to such suspension, provided Contractor complies with all requirements set forth in part 7.

OWNER'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

5.0 Add the following paragraph to Section 3.4 DELAY of the SFGC:

- D. Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:
 - 1. Acts of God or the public enemy;
 - 2. Acts or omissions of any government entity;
 - 3. Fire or other casualty for which Contractor is not responsible;
 - 4. Quarantine or epidemic;
 - 5. Strike or defensive lockout;
 - 6. Unusually severe weather, in excess of weather conditions experienced within the area anytime in the preceding then years:
 - i. Monthly rainfall in excess of the highest monthly rainfall experienced for the same month.
 - ii. Annual rainfall in excess of the highest annual rainfall experienced.

- iii. Monthly snowfall in excess of the highest monthly snowfall experienced for the same month.
 - iv. Annual snowfall in excess of the highest annual snowfall experienced.
 - v. Average high temperatures, for the summer months, in excess of the highest temperatures experienced.
 - vi. Average low temperatures for the winter months, lower than the lowest average temperature experienced.
7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.

6.0 Replace Section 5.13 TESTS AND INSPECTIONS of the SFGC with the following:

5.13 TESTS AND INSPECTION

- A. Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.
- B. Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:
 - 1. Constitute or imply acceptance;
 - 2. Relieve Contractor of responsibility for providing adequate quality control measures;
 - 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
 - 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
 - 5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled
- C. Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- D. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional

cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

7.0 Add the following sections to Part 5 - PERFORMANCE of the SFGC:

5.21 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

- A. Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.
- B. Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

5.22 LAYOUT OF WORK

- A. Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. Contractor shall lay out the Work from Owner-established baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

8.0 PREBID CONFERENCE

Owner may set up a prebid conference prior to bid opening for this project. The purpose of the prebid conference is to resolve ambiguities, inconsistencies, errors or omissions in the plans or specifications.

The bidder has a **DUTY** to make all reasonable inquiries and raise any questions regarding any ambiguities, inconsistencies, errors, or omissions that it encounters in the contract document. If a contract issue could have been raised and resolved at the Prebid Conference or by inquiry by the bidder prior to the Prebid Conference, the resolution shall be made without additional cost to Owner. Interpretation of the contract document will be based on the design intent of the project. Following the prebid conference, an addendum may be sent to all bidders with the information disclosed and discovered by the prebid conference. This provision creates a positive duty on all bidders to inquire of the Engineer any questions which rely on the bidder's own subjective interpretation of the contract.

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must make a request to Owner at or before the prebid conference. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all

other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

9.0 CONTRACTOR LICENSE

A bidder must be a licensed contractor in the State of Washington before submitting a bid on this contract.

10.0 CONTRACTING AGENCY

For purposes of this contract, all references to the Architect in the General Conditions shall be understood to mean the Manager of the Engineering Division, Department of Natural Resources, State of Washington.

11.0 SPECIFICATIONS AND DRAWINGS

A. Codes

Contractor shall conform to all local, state and national codes in all phases of this project. These codes will be considered as minimum requirements for materials and installation, except where the contract drawings and/or the specifications exceed those requirements.

B. Standard Specifications

All references made to Standard Specifications herein are to mean the current edition, unless noted otherwise, of the Standard Specifications for Road and Bridge Construction, published by the Washington State Department of Transportation.

C. Copies Furnished

Unless otherwise provided in the Contract Documents, Owner will furnish to Contractor, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work, if available.

12.0 SITE INVESTIGATION

A. Site Investigation and Conditions Affecting the Work

1. Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered to the extent that this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of this contract. Any failure of Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Owner.
2. Owner assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Owner. Nor does Owner assume responsibility for any understanding reached or representation made

concerning conditions which can affect the work by any of its officers or agents before execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

13.0 PRE-AWARD CONFERENCE

- A. Owner may schedule a pre-award conference with the apparent low bidder after the bid opening. The purpose of the pre-award conference is to assure a full and complete understanding of the obligations of Contractor under a resulting contract. At the pre-award conference, the apparent low bidder (Contractor) will be given the opportunity to acquire the necessary data to fully understand their responsibilities under the contract. The low bidder shall explain at this conference how it shall conform to the essential requirements of this solicitation. The failure of the low bidder to substantiate conformance to the contract requirements shall be cause for the rejection of the low bid.
- B. The pre-award conference shall serve as a basis for resolution of ambiguities and the potential for disputes. No negotiation of the terms and conditions of the bid will be permitted at the pre-award conference.

14.0 INSURANCE REQUIREMENTS

General:

A. Evidence of Insurance

Contractor must furnish evidence of insurance in the form of a Certificate of Insurance (form SF500A, dated 7/02/92) satisfactory to Owner, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth below. The Certificate of Insurance must reference Owner' name and project number. Contractor must provide proof of coverage before commencing work under this Agreement.

B. Cancellation

The Certificate(s) of Insurance must provide 45 days written notice to Owner before the cancellation, nonrenewal, or material change of any insurance coverage included therein. Notices must be sent to Owner.

C. Additional Requirements

- 1. All policies must name Owner as an additional insured.
- 2. All insurance policy(ies) must include Other Insurance provisions that state Contractor's policy provides primary insurance coverage.
- 3. All insurance policies must provide liability coverage on an **occurrence** basis unless otherwise specified in this Contract.
- 4. Policies must be issued by an insurer admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Excess of "surplus lines" carriers must be approved in advance by the Risk Manager (or other authorized representative) of Owner. All insurers must have a Best's rating of A-VI or better.

D. Breach of Contract

Failure by Contractor to maintain or show evidence of insurance or comply with any of the provisions in this contract is a material breach of contract. Upon breach of contract,

Owner may, at its discretion, cancel or suspend the Contract, or purchase insurance equivalent to the Minimum Coverage Requirements.

All monies paid by owner on behalf of Contractor shall be repaid to Owner on demand. Owner, at its discretion, may offset the cost of any insurance premiums paid for Contractor with any monies due Contractor by Owner.

E. Minimum Coverage Requirements

The Minimum Coverage Requirements set forth the **minimum** limits of insurance the Contractor may purchase to enter a contract with Owner. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these minimum limits of coverage does not relieve Contractor from liability for losses and settlement expenses greater than these amounts. Owner shall not be charged for the cost for insurance coverage(s) greater than those listed in the Minimum Coverage Requirements without prior approval by Owner.

During the term of the Contract, Contractor must purchase and maintain the insurance coverages and limits specified below:

1. Contracts Less Than \$250,000:

- a. Commercial General Liability (CGL) Insurance. Contractor must purchase and maintain CGL on an Insurance Services Office (ISO) form CG 00 01, or equivalent form, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract. Such insurance must be provided on an occurrence basis. Insurance must include liability coverage with limits not less than those specified below:

Description

General Aggregate Limit (other than products-completed operations)	\$2,000,000
Products-Completed Operations Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000

- b. Worker's Compensation Coverage - Contractor must comply at all times with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations and if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act. Such coverage must be afforded for all employees of Contractor, and for all employees of any subcontractor retained by Contractor. Coverage must apply to bodily injury (including resulting death) by accident or disease which arises out of or in connection with the performance of the Contract. Satisfaction of these requirements shall include, but shall not be limited to:

- i. Full participation in any required governmental, occupational injury and/or disease insurance program, to the extent participation in such program is mandatory in any jurisdiction.
- ii. Purchase of workers' compensation and occupational disease insurance, to the extent such coverage is not provided under a mandatory government program as in i. above.
- iii. Maintenance of a legally permitted and governmentally approved program of self insurance.

Except to the extent prohibited by law, Workers Compensation Coverage shall provide for a waiver of rights of subrogation against Owner, its directors, officers, and employees.

If Owner incurs fines or is required by law to provide coverage or benefits due to failure by Contractor, or any subcontractor retained by Contractor, to effect or maintain a program of compliance with applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations, Contractor must indemnify Owner for all benefits, costs and fines. Amounts owed to Owner by Contractor pursuant to any such indemnity may not be deducted from any payments owed by Owner to Contractor for performance of this Contract.

- c. Employers Liability ("Stop Gap") Insurance. Contractor must purchase and maintain Employers Liability or "Stop Gap" Insurance to include liability coverage with limits not less than those specified below. Contractor waives immunity under Title 51 RCW to the extent required by this clause. Insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>By Accident</u>	<u>Each Employee Policy Limit</u>	
		<u>By Disease</u>	<u>By Disease</u>
Bodily Injury	\$1,000,000	\$1,000,000	\$1,000,000

- d. Hazardous Substance Removal. For Contracts involving hazardous substance removal, including but not limited to:

Asbestos abatement
Lead abatement
PCB abatement
Petroleum contaminated soil remediation

Contractor must provide and maintain liability insurance covering bodily injury and property damages arising out of the abatement or removal of hazardous substances. Examples of acceptable coverage include:

Asbestos Abatement Liability Insurance
Lead Abatement Liability Insurance
Environmental Contractors Pollution Liability Insurance

Such insurance may be provided on an Occurrence or claims-made basis. If such coverage is provided on a claims-made basis, the following additional conditions must be met:

- i. The Insurance Certificate must state that the insurer is covering hazardous substance removal.
- ii. The policy must contain no retroactive date, or the retroactive date must precede the date that Contractor first entered into the Contract with Owner to perform abatement services.
- iii. Coverage must be continuously maintained with the same insurance carrier through the official completion of the project.
- iv. The extended reporting period (“tail”) must be purchased to cover a minimum of 24 months beyond project completion.

Insurance must include liability coverage with limits not less than those specified below:

Description

General Aggregate Limit	\$1,000,000
Each Claim/Occurrence Limit	\$1,000,000

- e. Business Auto Policy (BAP) Insurance (Required for all Contracts). If services delivered pursuant to this Contract involve the use of vehicles or the transportation of clients, Contractor must purchase and maintain a BAP on an Insurance Services Office (ISO) form CA 00 01, or equivalent form. The Description of Covered Autos must include one or more of the following:

“Any Auto” (Symbol 1), or one or more of the following alternatives, as applicable:

If Contractor-owned personal vehicles are used, the BAP must cover “Owner Autos Only” (Symbol 2).

If Contractor hires autos, the BAP must cover “Hired Autos Only” (Symbol 8).

If Contractor employee’s vehicles are used, the BAP must cover “Nonowned Autos Only” (Symbol 9).

Such insurance must be provided on an occurrence basis. The BAP insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

2. Contracts Over \$250,000 But Less Than \$5,000,000:

In addition to the insurance coverages under 1. above, Contractor must obtain Excess (“Umbrella”) Liability Insurance. Such insurance should be provided on an occurrence basis, and must provide excess coverage over the primary insurance in limits not less than those specified below:

<u>Description</u>	
Excess Aggregate Limit	\$1,000,000
Excess Limit, per Occurrence	\$1,000,000

3. Contracts Greater Than \$5,000,000:

- a. Commercial General Liability (CGL) Insurance. Contractor must purchase and maintain CGL with specifications identical to those outlined under 1.a above, with the following amendments:

Insurance must include liability coverage with limits not less than those specified below:

General Aggregate Limit (other than products-completed operations)	\$5,000,000
Products-Completed Operations	\$5,000,000
Personal & Advertising Injury Limit	\$2,500,000
Each Occurrence Limit	\$2,500,000
Fire Damage Limit (per fire)	\$ 50,000
Medical Expense Limit (per person)	\$ 5,000

- b. Hazardous Substance Removal. Contractor must purchase and maintain CGL with specifications identical to those outlined under 1.d. above, with the following amendments:

Insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	
General Aggregate Limit	\$5,000,000
Each Claim/Occurrence	\$2,500,000

15.0 PERMITS AND FEES

A. Taxes

The Contract sum and any agreed variations thereof shall include all taxes imposed by law, except for State sales tax. Sales tax will be collected from Owner, and will be paid to the Washington State Department of Revenue by Contractor in conformance with the law. Contractor shall furnish proof of payment of State sales tax required by law.

B. Permits

All permits, fees and reviews required by local, state or federal governmental agencies necessary for the accomplishment of this project shall be obtained and paid for by Contractor.

16.0 BIDDING

A. Filling In Proposal Forms

The bidders shall submit their proposal on the forms supplied with the specifications. All blank spaces in the proposal form shall be properly filled in. If the proposal is made by a partnership or copartnership, it shall be so stated, contain the names of each partner, and be signed in the firm name, followed by the signature of one partner. If the proposal is made by a corporation, it shall be signed in the name of the corporation, followed by the written signature of the officer authorized to bind the corporation and the printed or typewritten designation of the office held in the corporation. The address of the bidder shall be typed or printed on the proposal in the space provided.

B. Submission of Proposal

No oral, telephone, FAX, or telegraph proposals will be considered. Each proposal, together with bid information and certified check or bid bond, shall be completely sealed in a separate envelope properly marked as follows:

NAME OF BIDDER

PROPOSAL FOR: (Description of Job) JOB NO.

TIME, DATE AND LOCATION OF PROPOSAL OPENING

If bid envelopes are furnished with the bidding documents, they shall be used in submitting the bid. Bids will be received at the time and place stated in the announcement.

C. Unit Prices

If the Form of Proposal contains separate Add and Deduct Unit Prices for a given operation, the appropriate unit cost figure shall be applied to the total net difference in quantity considering the item or operation as a whole and not to its individual parts.

D. Lump Sum Items

It is understood and agreed that the list of quantities for Lump Sum items contained in the Specifications are approximate and stated only for Contractor's convenience. The prospective bidder shall make an estimate of the amount of work required to complete the project as shown on the plans and specifications. No adjustment in the Lump Sum bid items will be made in the event that the actual quantities vary from the estimated quantities shown.

E. Proposal Sums

The sum of money shown on the proposal covering all work included in base bid contract documents, together with any Addenda thereto and/or for unit prices called for, or for any alternates called for, shall include all items of labor, material, equipment, overhead and compensation to complete all of the work under each particular heading.

F. Subcontractor Requirements

Every invitation to bid on a contract that is expected to cost in excess of \$1 million shall require each bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of heating, ventilation and air conditioning, plumbing, and electrical, or to name itself for the work. Failure of the bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the bidder's bid nonresponsive and, therefore, void. RCW 39.30.060.

G. Prohibition of Alterations

Except as otherwise provided herein, proposals which are incomplete, or which are conditioned in any way, or which contain erasures, alterations, or items not called for in the proposal, or which are not in conformity to the law, may be rejected.

The proposal form invites bids on definite plans and specifications. Only the amounts and information asked for on the proposal form furnished will be considered as the bid. Each bidder shall bid upon the work exactly as specified. The bidder shall bid upon all alternates indicated on the proposal form as provided herein. When bidding on alternates for which there is no charge, the bidder shall write the words "No Charge" or "No Change" in the space provided in the proposal form.

H. Bid Guarantee

1. Bids Over \$25,000

- a. **WHEN THE BID IS GREATER THAN \$25,000, FAILURE TO FURNISH A BID GUARANTEE IN AN AMOUNT EQUAL TO AT LEAST FIVE PERCENT (5%) OF THE SPECIFIED BASE BID, BY THE TIME SET FOR OPENING OF BIDS, SHALL BE CAUSE FOR REJECTION OF THE BID.**
- b. The bidder shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, postal money order, or cashier's check, payable to the Department of Natural Resources. Owner will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
- c. Unless otherwise specified in the bid, the bidder will (1) allow sixty (60) days for acceptance of its bid, and (2) submit executed contract, insurance certificate and bond or bond waiver within fifteen (15) days after receipt of the forms by the bidder. If the successful bidder, upon acceptance of its bid by Owner within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) and insurance as required by the solicitation within the time specified, Owner may terminate the contract.

- d. In the event the contract is terminated, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

2. Bids Under \$25,000 - No bid guarantee required.

I. Modification of Proposal

Modification of proposals already received will be considered only if the modification is received prior to the bid opening. All modifications must be made in writing and on the stationery of and signed by the bidder.

Telegraphic modifications will be accepted only if such telegraphic modification is received prior to the bid opening time (telegrams must be delivered) and same is confirmed in writing on the stationery of the bidder. Such confirming letter shall be postmarked or hand delivered prior to bid opening time.

J. Withdrawal of Proposal

At any time prior to the scheduled closing time for receipt of proposals, any bidder may withdraw their proposal, either personally or by written request and/or telegraphic request, in the manner set forth herein for modification of proposal. If withdrawal is made personally, proper receipt shall be given therefor.

After the scheduled closing time for the receipt of proposals, or before award of contract, no bidder will be permitted to withdraw their proposal unless said award is delayed for a period exceeding thirty (30) days. Any bids received after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.

K. Rejection of Proposal

Owner reserves the right to reject any and/or all proposals. It also reserves the right to waive any informalities in connection with said proposals or bids. If the proposal includes a supplemental schedule of predetermined unit prices for labor and materials, or other items for the purpose of establishing a cost basis on unforeseen contract changes, Owner reserves the right to reject, without impairing the balance of the proposal, any or all such predetermined unit prices on such supplemental schedules which Owner may consider excessive or unreasonable.

L. Contract Award

1. Owner will evaluate bids in response to the solicitation.
2. A bid will be considered responsive if it meets requirements of this contract.
3. Owner may waive minor irregularities in bids received, reject any nonresponsive bid, or reject all bids if the bids exceed funds allocated for the work.
4. Owner may negotiate bid price adjustments with the low responsive bidder, including changes in the contract plans and specifications, to bring the bid within the available funding per RCW 39.04.015.
5. The low bidder, for purpose of award, shall be the conforming responsive bidder offering the lowest aggregate amount for the base bid plus additive or deductive bid items within their stated bid priority, and within funds for the project.

17.0 CONSTRUCTION

A. Preconstruction Meeting

Within fifteen (15) days after notice to proceed has been given to Contractor, Contractor may arrange and hold a preconstruction meeting with Owner. This meeting shall be held at the construction site, unless otherwise directed by Owner.

At the preconstruction meeting, Contractor shall submit for approval a letter stating the starting date for work, estimated schedule of work, and the estimated completion date. The starting date shall not be more than thirty (30) days after notice to proceed, unless otherwise approved by Owner. The estimated completion date shall not be later than the contract completion date.

At the preconstruction meeting, a compliance inspector for Owner will be designated for the job. At the time, Contractor will designate the job supervisor.

B. Contractor's Notice

Contractor shall notify Owner at least twenty-four (24) hours before commencement of initial work, before any prolonged suspension of work, and before resumption of work.

C. Access To Work

Owner shall at all times have access to the work whenever it is in preparation or progress, and Contractor shall provide facilities for such access so that Owner may perform its functions under the contract.

D. Manufacturers' Recommendations

Contractor shall determine and comply with manufacturers' recommendations, except as otherwise approved, in writing by Owner, on product installation, handling, storage, and protection. Products shall be delivered to the job site in the manufacturers' original container, with the seals unbroken and the labels intact and legible, until the time of use.

Damaged and unsuitable material shall be promptly removed from the job site and replaced with material meeting the specified requirements, at no additional cost to Owner.

E. Substitute Materials

Materials furnished by Contractor shall be of the type and quality described in these specifications. Contractor shall make diligent effort to furnish the specified materials from any and all sources. No substitute materials shall be used without prior written approval of Owner. Contractor shall submit five (5) sets of catalog cuts for Owner's approval before ordering any substitute materials and, if approved, shall make all changes deriving from such changes, at its own expense.

F. Watchman

If Contractor deems it necessary, Contractor shall at its own expense employ and maintain sufficient watchman service as to protect its equipment and the property of Owner.

G. Substantial Completion

The date of substantial completion is the date certified by Owner when the work, or a designated portion thereof, is sufficiently complete, in accordance with the contract documents, so the Owner may occupy the work or designated portion thereof for the use for which it is intended.

1. Preliminary Procedures. Before requesting inspection for certification of Substantial Completion, complete the following:

- a. In the Application for Payment that coincides with, or first follows, the date Substantial Completion is claimed, show 100 percent completion for the portion of the Work claimed as substantially complete. Include supporting documents for completion as indicated in these Contract Documents and a statement showing an accounting of changes to the

Contract Sum.

- (i) If 100 percent completion cannot be shown, include a list of incomplete items, the value of incomplete construction, and reasons the work is not complete.
 - b. Advise Owner of pending insurance changeover requirements.
 - c. Submit specific warranties, workmanship bonds, maintenance agreements, final certifications and similar documents.
 - d. Obtain and submit releases enabling Owner unrestricted use of the work and access to services and utilities; include occupancy permits, operating certificates and similar releases.
 - e. Submit record drawings, maintenance manuals, final project photographs, damage or settlement survey, property survey, and similar final record information.
 - f. Deliver tools, spare parts, extra stock, and similar items.
 - g. Make final changeover of permanent locks, and transmit keys to Owner. Advise Owner's personnel of changeover in security provisions.
 - h. Complete start-up testing of systems and instruction of Owner's operating maintenance personnel. Discontinue or change over and remove temporary facilities from the site, along with construction tools, mock-ups, and similar elements.
 - i. Complete final cleanup requirements, including touchup painting. Touchup and otherwise repair and restore marred exposed finishes.
2. **Inspection Procedures.** On receipt of a request for inspection, Owner will either proceed with inspection or advise Contractor of unfulfilled requirements. Owner will prepare the Certificate of Substantial Completion following inspection, or advise Contractor of construction that must be completed or corrected before the certificate will be issued.
- a. Owner will repeat inspection when requested and assured that the work has been substantially completed.
 - b. Results of the completed inspection will form the basis of requirements for final acceptance.

H. Final Completion (Supplements Part 6.09 of the General Conditions)

Final completion shall occur within sixty (60) days from the date substantial completion is achieved. This section is considered as written notification in accordance with Part 6.09, "Final Completion, Acceptance and Payment," of the General Conditions for Washington State Facility Construction. Any change in the date of Final Completion must be approved by change order.

I. Operation and Maintenance Information

Prior to final acceptance by Owner, Contractor shall provide to Owner four (4) copies of the maintenance and operations manuals, if required by Owner.

18.0 SAFETY

A. Trench Excavation Safety System

On public works projects in which trench excavation will exceed a depth of four (4) feet, any contract therefor shall require adequate safety systems for the trench excavation that

meet the requirements of the Washington Industrial Safety and Health Act, chapter 49.17 RCW. This requirement shall be included in the cost estimates and bidding forms as a separate item. The costs of trench safety systems shall not be considered as incidental to any other contract item, and any attempt to include the trench safety system as an incidental cost is prohibited.

B. Forest Protection

Contractor shall become acquainted with and obey all applicable State laws and regulations for fire prevention. Contractor shall consult with the local warden for any required permits, fire fighting equipment, and burning regulations. Contractor shall be responsible for strict observance of any of these laws and regulations.

Contractor shall take all reasonable precautions to prevent and suppress forest fires and shall require its employees and those of any subcontractor to work under the direction of Owner when necessary to accomplish this. Contractor shall immediately notify the nearest Department of Natural Resources office of any forest fires and the exact location, and do all in its power to suppress them.

Contractor shall conduct all activities in full accordance with all rules and regulations of the Forest Practices Act of 1987. A copy of these regulations may be obtained from any DNR Regional Office.

19.0 MWBE

The term "MWBE" (Minority and Women's Business Enterprise) shall include both MBE (Minority Business Enterprise) and WBE (Women's Business Enterprise).

A. Special Requirements for MWBE Participation

1. MBE/WBE Goals

- a. Owner has set annual MWBE participation goals. Bidders are encouraged to incorporate MWBE certified firms in full or partial execution of contract.
- b. The bidder is required to state the amount of MWBE participation incorporated in the bid, in the appropriate spaces on the Form of Proposal.

2. MWBE Eligibilit

- a. Minority and Women's Business Enterprises shall be certified by the Washington State Office of Minority and Women's Business Enterprises, in accordance with WAC 326-30-005.
- b. Participation by MWBE firms which are not certified shall not be accepted.

3. MWBE Participation Toward Meeting Goals

- a. Only expenditures to MWBEs that perform a commercially useful function in the work or supply process may be counted toward MWBE goals.
 - i. Prime Contractor: Bidders that are either MBE or WBE certified may consider the entire amount of their bid toward meeting the goal in the category for which they are certified.
 - ii. Subcontractors: An MWBE subcontractor is expected to execute a distinct element of the work, and actually perform, manage and supervise the work involved.
 - iii. Suppliers: An MWBE supplier is expected to furnish materials, equipment or supplies as a distinct and necessary commercial

function of the project, provided that the supplier:

- (a) Assumes the actual and contractual responsibility for furnishing the supplies and materials and is the manufacturer of those supplies and materials; or
 - (b) Is recognized as a distributor by the manufacturers involved in the contracted supplies and materials; and owns or leases warehouses, yards, buildings for storage of manufactured materials, or whatever other facilities are viewed as customary or necessary by the industry; and distributes, delivers, or arranges delivery, and services products with its own staff.
- iv. When a firm acts only as a passive conduit in the supply process or duplicates a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted toward the MWBE goal.

20.0 PREVAILING WAGES

Effective January 31, 1992, the Department of Labor and Industries adopted amended Chapter 296-127 WAC that defines any fabricator and manufacturer of nonstandard items specifically intended for public works projects as contractors. All contractors shall pay prevailing rate of wages to all workers employed in the performance of any part of the work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries.

21.0 VARIATION IN ESTIMATED QUANTITY

If the quantity of a unit priced item in this contract is an estimated quantity and the actual quantity of the unit priced item varies more than 15% above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, Contractor may request in writing an extension of time, to be received by Owner within ten (10) days from the beginning of the delay, or within such further period as may be granted by Owner before the date of final acceptance of the contract. Upon the receipt of a written request for an extension, Owner shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of Owner, is justified.

22.0 CONSTRUCTION FIELD AUTHORIZATION

The Field Authorization must include a scope of work, a maximum amount that must not be exceeded, and any estimated modification to the contract completion time determined. The method of final cost verification must be noted and supporting cost data must be submitted in accordance with the requirements of Part 7 of the General Conditions. Upon satisfactory submittal and approval of supporting cost data, the completed Field Authorization will be processed into a change order to the construction contract. No billing will be provided until Field Authorization(s) are converted to change orders.

23.0 CONTRACTOR EXPERIENCE / REQUIREMENT

Upon request by Owner, after the bid opening and prior to award, the low bidder shall submit a list of, at a minimum, three (3) similar projects it has performed within the past three (3) years, containing the following:

- A. Type of work performed.

- B. Location of site.
- C. Date of beginning the project, and date of completion of project.
- D. Site owner and contact person, including phone number.

END, SUPPLEMENTAL CONDITIONS